

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL No. S-5645

Hawaii

Consent to Assign General Lease No. S-5645, Kukio Utility Company, LLC, Assignor, to Kona Water Service Company, Inc., Assignee, Kukio 1st, North Kona, Hawaii, Tax Map Key: 3rd/ 7-2-04:22 (formerly 7-2-04:04 por.)

APPLICANT:

Kukio Utility Company, LLC, as Assignor, to Kona Water Service Company, Inc., a Hawaii corporation, whose business and mailing address is c/o Hawaii Water Service Company, Inc., 1720 North First Street, San Jose, California 95112, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kukio 1st situated at North Kona, Island of Hawaii, identified by Tax Map Key: 3rd/7-2-04:22 (formerly 7-2-04:04 por.), as shown on the attached map labeled Exhibit A.

AREA:

3.493 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____
NO X

CHARACTER OF USE:

To be used solely for purposes of development and construction of an irrigation reservoir,
a 0.5 million-gallon water tank and a water treatment plant.

TERM OF LEASE:

65 years, commencing on October 26, 2001 and expiring on October 25, 2066. First
rental reopening is scheduled for October 26, 2011.

ANNUAL RENTAL:

\$11,200.

CONSIDERATION:

\$2,340,980.

RECOMMENDED PREMIUM:

By memorandum dated October 30, 2008, and approved by the Chairperson on November
3, 2008, Land Division's staff appraiser determined that no premium is due on the subject
assignment.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO ____
Registered business name confirmed:	YES <u>X</u>	NO ____
Good standing confirmed:	YES <u>X</u>	NO ____

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO ____
Registered business name confirmed:	YES <u>X</u>	NO ____
Good standing confirmed:	YES <u>X</u>	NO ____

REMARKS:

Applicant Kukio Utility Company, LLC (Applicant) is the wholly-owned subsidiary of
WB Kukio Resorts, LLC (WB Kukio). WB Kukio is the developer of master planned
residential community in North Kona known as Kukio which consists of the Kukio

project and the Manini'owali project. The Kukio project comprises approximately 675 acres of land and consists of 150 residential lots, an 18-hole golf course, a 10-hole golf practice facility, a 3-unit private lodge (14 hotel rooms), a 19-unit condominium project, and another 10-unit condominium project. The Manini'owali project contains approximately 388 acres, and consists of approximately 139 residential lots and a sports complex.

Beginning in the 1990s, WB Kukio sought the use of State lands to construct a water system to support the resort and other uses in the area, including irrigation water for the West Hawaii Veteran's Cemetery. At its meeting of May 26, 2000 (Item D-17), the Board of Land and Natural Resources approved the grant of a non-exclusive easement to WB Kukio to construct, maintain, and replace underground water transmission pipelines, two breaker tank sites, as well as overhead electrical and CATV utilities, over, under and across State land. On July 18, 2002, the State and WB Kukio entered into a Grant of Non-Exclusive Easement to formalize the Board's approval that was recorded in the Bureau of Conveyances as Document No. 2002-125660, and assigned LOD No. 28,503.

At its meeting of October 26, 2001, Item D-12, the Board approved a direct lease to WB Kukio or its PUC-regulated utility company for development and construction of an irrigation reservoir, a 0.5 million gallon water tank and a water treatment plant on the subject land. On February 10, 2004, the State and Applicant entered into General Lease No. S-5645 for these purposes.

General Lease No. S-5645 references TMK (3) 7-2-04:04 por. and encumbers 3.493 acres described in the lease. Prior to the execution of the lease, the County of Hawaii Planning Department on November 26, 2001 issued final subdivision approval for the subdivision of the leased parcel out of the larger TMK (3) 7-2-04:04. The County of Hawaii Finance Department, Real Property Tax Office, assigned TMK (3) 7-2-04:22 to the leased parcel created from the subdivision.

Applicant and WB Kukio have decided to sell all of their water and wastewater assets to Kona Water Service Company, Inc. (KWSC). According to Applicant, KWSC is a wholly-owned subsidiary of Hawaii Water Service Company, Inc., which is in turn a wholly-owned subsidiary of California Water Service Group (CWSG), a publicly traded company on the New York Stock Exchange. CWSG provides water and wastewater service to approximately 480,000 customers. Upon the closing of the asset sale, for which approval from the Public Utilities Commission is required, KWSC will assume all of Applicant's and WB Kukio's water and wastewater obligations under the Lease and the Grant of Non-Exclusive Easement (WB Kukio is seeking the assignment of the Grant of Non-Exclusive Easement by separate submittal).

The proposed assignee, KWSC, appears to be qualified to run the water and wastewater systems now in place and meet the lease obligations.

Based on staff's present knowledge, Applicant is in compliance with all lease terms and conditions. A notice of default was issued to Applicant on October 29, 2007 for no insurance. Applicant cured the default on October 31, 2007, and the notice of default was rescinded by letter dated November 5, 2007. A second notice of default was issued to Applicant on October 30, 2008 for no insurance. Applicant cured the default on November 14, 2008, and the notice of default was rescinded by letter dated November 17, 2008.

KWSC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

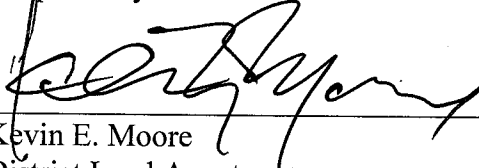
There are no outstanding rental reopening issues.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5645 from Kukio Utility Company, LLC, as Assignor, to Kona Water Service Company, Inc., as Assignee, subject to the following:

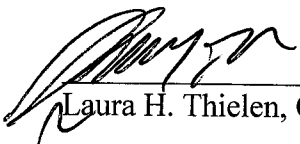
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

